

## REMARKS

### Obviousness Rejections

Claims 1-5, 9, 10, 12-16, 41, and 42 stand rejected as being allegedly obvious in light of U.S. Patent No. 5,689,333 to Batchelder, et al. (“Batchelder”) as evidenced by Rigler (US 2002/0114224) taken in view of Scott (US 6,822,228) and Garini (US 2002/017084). Applicants respectfully disagree with the basis of the rejection.

Applicants specifically reject the application of the Scott reference to the claims at issue. In reference to pending independent claims 1, 41, and 42, the Scott reference is used by the Examiner for the proposition that “forming composite image from plural views” of a sample is taught by Scott and that a person of ordinary skill in the art would combine the teaching of Scott with the other references to reach the combinations recited in claims 1, 41, and 42 (Office Action of June 5, 2007, pg 3) While not accepting the Examiner’s contention that the remaining elements of independent claims 1, 41, and 42 are taught by the other references (i.e., Batchelder, Rigler, Treado, and Garini), for purposes of this response, Applicants focus solely on the inapplicability of the Scott reference as prior art to the independent claims.

The Examiner relies on Fig. 10 of Scott as evidence of his claim that the creation of a composite image based upon plural views is taught. Fig. 10 does not depict an image based upon plural views of a sample with different wavelengths. Fig. 10 depicts a compilation of the ratio of mass to charge ( $m/z$ ) for each separate one of a linear series of data samples (see Fig. 9 of Scott) measured with a laser desorption microprobe Fourier

transform mass spectrometer(LD-FTMS), as measured during a single pass of the device disclosed in Scott. (Scott, col. 16, lines 12-19). This is not a composite image.

To clarify the interpretation of Fig. 10, one must refer to Fig. 9 and the appropriate text.(col. 16, lines 4-19). Fig. 9 of Scott shows a scanning electron micrograph of the sample after a single pass with a device described in Scott. In Fig. 10 of Scott, the axis labeled “Position” refers to the relative position of the laser spots as identified in Fig. 9 (labeled “1” through “12”). The m/z axis of Fig. 10 is the value of the mass to charge ratio as measured by the LD-FTMS. for each of the twelve laser spots in Fig. 9 (Scott, col. 16, 11-17).

Fig. 10 is not a “composite image from plural views” (as stated in the Office Action of June 5, 2007, pg 3); nor is it produced by collecting image data of a sample for each of the “different specific wavelengths” for which an electro-optical tunable filter is tuned as claimed in Claim 1. Each of the graphs depicted are the data collected on a single pass of the device disclosed in Scott. Nowhere does Scott teach multiple passes with different filtered light nor multiple passes with different wavelength light for a given sample.

The design goals of Scott do not state that multiple passes for a given sample with differing wavelengths are envisioned. (Scott, col. 14, lines 24-42). Furthermore, it is recognized that multiple passes on the same sample, as enabled by Scott, is only appropriate for depth profiling which indicates that the Scott device is recognized as inherently ablating a layer of sample material on each given pass (Scott, col. 14, lines 30-32); this indicates a fundamental incompatibility with the apparatus of the present

invention wherein repeated collections of light intensity, at least once for each of multiple wavelengths of light reflected, emitted, transmitted, or scattered from the specimen for which the tunable filter is tuned, occurs.

Claim 1 states “collecting and storing the intensity of ... light at each of said pixels for each of said specific wavelengths to which said ... filter is tuned”. None of the art cited by the examiner, either alone or in combination, meets this limitation.

For the above reasons, independent Claims 41 and 42 are not obvious in view of a combination of Batchelder as evidenced by Rigler, taken in view of Scott and Garini. Dependent claims 2-5, 9, 10, and 12-16 all ultimately depend from Claim 1. As these dependent claims are rejected on the same underlying basis as Claim 1, they are allowable therefore for the same reason as Claim 1 without regard to the additional patentable limitations contained respectively therein. Therefore Claims 1-5, 9, 10, 12-16, 41 and 42 are allowable.

Claims 6-8 stand rejected as allegedly unpatentable as being obvious over a combination of Batchelder as evidenced by Rigler(US 2002/0114224) taken in view of Scott(US 6,822,228) and Garini(US 2002/017084) and further in view of Treado (US 6,002,476). Claim 11 stands rejected as being obvious in view of the same combination taken further in view of Fillard (U.S. Patent No. 5,770,856). Each of Claims 6-8 and 11 depends, either directly or indirectly, from Claim 1 which as explained is patentable over the combination of prior art references applied thereto. None of the additional secondary references obviates the deficiencies as noted above for Batchelder as evidenced by Rigler in view of Scott and Garini. Accordingly, Claims 6-8 and 11 are deemed patentable by

virtue of this dependence from Claim 1 without reference to the additional patentable limitations contained therein. Therefore, additional reasons for patentability of each dependent claim need not be discussed at this time and Claims 6-8 and 11 are allowable.

Accordingly, Applicants respectfully request the reconsideration and withdrawal of the rejections of Claims 1-16 and 41-42.

### CONCLUSION

Applicants respectfully submit that all of the claims are in condition for allowance.

A notice to this effect is respectfully requested.

If any point remains that is deemed best resolved through a telephonic conversation, the Office is hereby requested to contact the undersigned directly.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark C. Comtois", written over a horizontal line.

Mark C. Comtois  
Reg. No. 46,285

DUANE MORRIS LLP  
1667 K Street, N.W., Suite 700  
Washington, DC 20006  
Telephone: (202) 776-7800  
Facsimile: (202) 776-7801

Dated: 6 August 2007